

REMARKS

Reconsideration and withdrawal of the rejection of all the claims now in the application (i.e. Claims 1-22) is respectfully requested in view of the foregoing amendments and the following remarks.

Initially, the Examiner rejected claims 1-17 as being unpatentable over a combination of *Biscup* U.S. Patent No. 6,245,108 in view of *Middleton* U.S. Patent No. 6,136,031. The Examiner stated that *Biscup* taught openings in the sidewalls but not a narrow longitudinal slit as claimed by applicant. *Middleton* teaches slits and the Examiner considered it obvious to add a slit of *Middleton* through the sidewall of *Biscup*.

It is applicant's position that *Biscup* teaches away from adding a slit in the sidewall because openings 140 are designed to receive packing material and to allow for blood flow between the packing material and the cavity 130. In column 9, lines 16-29 of *Biscup*, it is stated that openings 140 are designed to receive packing material 300 and to allow for blood flow between the packing material within the cavity 130 and the surrounding regions of the vertebra. Thus, sidewalls 60, 70 cannot be flexible, otherwise this would damage the tissue through which the blood is flowing. This again, is indicated on column 9 of *Biscup* where it is stated that the sidewalls have two openings 140 which are to be maximized without adversely affecting the structural integrity of the cage. *Middleton* in column 5, lines 32-34 teaches that the slits increases the flexibility of the prosthesis. It is submitted that a longitudinal slit in the sidewall of *Biscup* would reduce the structural integrity of the cage by allowing the sidewall to flex and would not allow the required blood flow into the cavity.

On page 7 of applicant's disclosure in the middle paragraph, it is taught that the narrow configuration of longitudinal slit 114 reduces invasion of interdiscal tissues and fluids into the interior of the implant body 102 and facilitates retention of the graft within the implant body 102. Thus, claim 1 requires the sidewall to have a "substantially narrow longitudinal slit" which, as taught in the specification, is to preclude the ingress of blood and tissue into the internal cavity of the implant. This is exactly the opposite of what is being taught in *Biscup*. Thus, it is applicant's position that *Biscup* teaches away from including the narrow slit of *Middleton* in a sidewall.

Applicant has added additional claims 20-22 directed to the kit discussed in the top paragraph on page 9 of the specification. The Examiner has stated that the prior art teaches an internal cavity in the form of a generally cylindrical bore and that it would be a matter of

design choice to add additional bores. While the applicant disagrees that adding more bores is a matter of design choice, the Examiner has not shown any piece of prior art with multiple bores and multiple bone plugs designed to fit in the bores as claimed in claims 18-22. Applicant's newly claimed kit allows the use of any one of a plurality of bone dowels, as discussed on page 8 of the specification, some of which can be made of bone and others of a bone substitute such as calcium phosphate or some of autograft bone and other of allograft material. These could be mixed in the claimed plurality of bores should a surgeon desire to do so. The prior art, for example, U.S. Patent No. 6,039,762, 6,136,031 or 6,245,108, show only a single central bore. Nowhere is it suggested that a plurality of bores could be used with a plurality of different bone plugs. The advantage of utilizing two or more bores in a kit containing a plurality of different type bone plugs is that physically different bone plugs can be utilized in each adjacent bore. Thus, a calcium phosphate bone plug can be used adjacent a bone plug made of autograft or allograft bone. Bone plugs could be used incorporating bone morphogenic proteins or without such proteins. Such is not taught or suggested in the prior art and it is applicant's position that such is not a mere duplication of the single cavity and graft material which the Examiner believes is a matter of design choice.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

By

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